

ESTTA Tracking number: **ESTTA122227**

Filing date: **01/29/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr.SteveGoddard
Granted to Date of previous extension	01/28/2007
Address	195 DAPPLEGRAY ROAD BELL CANYON, CA 91307 UNITED STATES

Attorney information	Harold K. Kyle 1583 Spinnaker Dr. #209 Ventura, CA 93001 UNITED STATES hkylelaw@aol.com Phone:805-477-0050
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Applicant Information

Application No	78785874	Publication date	08/01/2006
Opposition Filing Date	01/29/2007	Opposition Period Ends	01/28/2007
Applicant	Avon Products, Inc. 1251 Avenue of the Americas New York, NY 10020 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 1970/00/00 First Use In Commerce: 1970/00/00 All goods and sevicees in the class are opposed, namely: Non-medicated skin care preparations

Applicant Information

Application No	78785886	Publication date	08/01/2006
Opposition Filing Date	01/29/2007	Opposition Period Ends	
Applicant	Avon Products, Inc. 1251 Avenue of the Americas New York, NY 10020 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and sevicees in the class are opposed, namely: Non-medicated skin care preparations, namely, lotions and creams for cellulite reduction and stretch mark prevention

Attachments	Notice of Opposition 874 v2 SUPER SHAPE 886.pdf (4 pages)(15760 bytes) Notice of Opposition 886 SUPER SHAPE 886_doc.pdf (4 pages)(15039 bytes)
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Signature	/hkk/
Name	Harold K. Kyle
Date	01/29/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

NOTICE OF OPPOSITION

In re Trademark Application Serial No. : 78/785874
For the Mark : SUPER SHAPE
Filed : January 5, 2006
Published in the Official Gazette on : August 1, 2006

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STEVE GODDARD	:	
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Opposer,	:	Opposition No.
	:	
v.	:	
	:	
AVON PRODUCTS, INC.	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Steve Goddard, an individual, with a business address of 195 Dapplegray Road, Bell Canyon, California 91307 (“Opposer”) believes he will be damaged by registration of Application Serial No. 78/785874 for the mark SUPER SHAPE and hereby opposes said application. As grounds for opposition, Opposer alleges as follows:

1. Opposer and/or his licensees has adopted and continuously used the trademark SUPER SHAPE (hereinafter sometimes referred to as “Opposer’s Mark”) in interstate commerce since at least as early as 2005 to the present, to distinguish and identify the source of his hair care products.

2. Through his sales, advertising, promotion, and continuous use for a significant period of time, Opposer has developed extensive goodwill throughout the United States with respect to the mark SUPER SHAPE as used on and in connection with his hair care products. Opposer's hair care products sold under and in connection with Opposer's Mark have earned a valuable reputation in that Opposer's Mark has come to be associated with hair care products of only the highest quality, design, and workmanship.

3. Opposer is the owner of the following United States Trademark Application covering hair care products as set forth below:

<u>Mark</u>	<u>Filed</u>	<u>Serial No.</u>	<u>Goods</u>
SUPER SHAPE	March 3, 2005	78/579431	Hair care products namely; shampoo, conditioner, deep conditioning treatments, non-medicated vitamin supplement treatments; hair spray; hair gel; curl enhancer; curl relaxer; color and highlighting treatments.

4. With regard to Opposer's foregoing Application Serial No. 78/579431, a Notice of Allowance was issued on November 7, 2006 and a Statement of Use, alleging use of the mark as early as July 1, 2005, was filed on November 15, 2006.

5. Applicant has filed Application Serial No. 78/785874 for the mark SUPER SHAPE for "Non-medicated skin care preparations" in International Class 3 (hereinafter "Applicant's Goods.).

6. The first use of the mark SUPER SHAPE by Opposer in connection with Opposer's Goods, as well as the filing date of Opposer's trademark application, is prior to the filing date of the subject Application. As such, Opposer is entitled to priority of rights over Applicant.

7. Opposer believes that the above argument is sufficient to defeat any allegation that Applicant is able to claim prior use of the subject trademark and that such trademark is registerable by Applicant. However, in the alternative, upon information and belief, Opposer reserves the right to assert that Applicant's Goods are highly related and complimentary to Opposer's Goods and are likely to be purchased by the same consumers, and that the use by Applicant of SUPER SHAPE or any variation on or in connection with such highly related goods is likely to cause confusion, or to cause mistake or to deceive.

8. Opposer respectfully requests that the TTAB take notice that Applicant has also filed an "intent to use" application (S/N 78/785886) for "SUPER SHAPE" in the same International Class 3, and that Opposer has also opposed the issuance of such registration. The fact that the Baxter of California is currently using the alleged trademark on a men's sunscreen lotion ,and that Applicant Avon Products, Inc. is using or is intending to use the same trademark on women's skin preparations for cellulite reduction and stretch mark reduction only highlights the fact that Applicant is allowing the use of the trademark by two entirely different companies on two entirely different products, resulting in the loss of any distinctiveness of the alleged trademark.

10. Based on the foregoing, registration of Application Serial No. 78/785874 is not entitled to registration and such registration will cause damage to Opposer, and such registration should, therefore, be denied.

WHEREFORE, it is respectfully requested that the Trademark Trial and Appeal Board refuse registration to Application Serial No. 78/785874.

Respectfully submitted,

STEVE GODDARD

January 29, 2007

By: _____

Harold K. Kyle
Attorney for Opposer
KYLE & ASSOCIATES
1583 Spinnaker Drive, Suite 209
Ventura, California 93001
(805) 477-0050

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5. Applicant has filed Application Serial No. 78/785886 for the mark SUPER SHAPE for "Non-medicated skin care preparations, namely lotions and creams for cellulite reduction and stretch mark prevention" in International Class 3 (hereinafter "Applicant's Goods.).

6. The first use of the mark SUPER SHAPE by Opposer in connection with Opposer's Goods , as well as the filing date of Opposer's trademark application, is prior to the filing date of the subject Application. As such, Opposer is entitled to priority of

rights over Applicant.

7. Opposer believes that the above argument is sufficient to successfully oppose the issuance of a trademark registration to Applicant. However, in the alternative, upon information and belief, Opposer reserves the right to assert that Applicant's Goods are highly related and complimentary to Opposer's Goods and are likely to be purchased by the same consumers, and that the use by Applicant of SUPER SHAPE or any variation on or in connection with such highly related goods is likely to cause confusion, or to cause mistake or to deceive.

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